

Message Text

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PAGE 01 MOSCOW 05845 271429Z
ACTION EUR-12

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USDOC FOR BEWT/TDAD(STEIN) AND BEWT/USSR

E.O. 11652: N/A
TAGS: EEWT, UR
SUBJECT: SOVIET CONTRACT CLAUSE REQUIRING INGOSSTRAKH
INSURANCE COVERAGE ON GOODS SHIPPED WITHIN U.S.

1. WILLIAM J. O'HARA, JR., MANAGER-ADMINISTRATION FOR
ARMCO INTERNATIONAL INC., COMPLAINED TO COMATT MARCH 21
ABOUT A SPECIFIC WRINKLE WE HAD NOT FOCUSSED ON BEFORE
IN SOVIET PRACTICE WHEN CONCLUDING CONTRACTS FOR
PURCHASE OF U.S. GOODS. ACCORDING TO O'HARA, SOVIETS
(PARTICULARLY FTO MASHINOIMPORT) INSIST THAT A CLAUSE
BE INCLUDED, EVEN IN F.O.B. (FREE ON BOARD) AND F.A.S.
(FREE ALONG SIDE) CONTRACTS, PROVIDING FOR INSURANCE
COVERAGE THROUGH SOVIET STATE INSURANCE AGENCY,
INGOSSTRAKH, ON DOMESTIC U.S. PORTION OF GOODS SHIPMENT,
WHILE TITLE TO GOODS IN FACT STILL VESTS IN SUPPLIER.
ACCORDING TO O'HARA, MOST AMERICAN MANUFACTURERS
ROUTINELY INSURE WITH U.S. INSURANCE FIRMS DOMESTIC
PORTION OF GOODS SHIPMENTS INTENDED FOR FOREIGN
DESTINATIONS. THUS, PURCHASE OF INGOSSTRAKH COVERAGE
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PAGE 02 MOSCOW 05845 271429Z

IS IN VIRTUALLY EVERY CASE REDUNDANT AND UNNECESSARY
AND AMOUNTS TO HARD CURRENCY DISCOUNT BY U.S. SELLER
TO SOVIET FTO.

2. ALTHOUGH O'HARA NOTED THAT SOVIET FTO'S HAVE BEEN
REGULARLY USING THIS PLOY IN NEGOTIATING CONTRACTS
FOR PURCHASE OF WHOLE GOODS FROM U.S. (AND OTHER

WESTERN)SUPPLIERS, HE WAS PARTICULARLY PIQUED JUST NOW SINCE ARMCO,IN ACCORDANCE WITH FIRM COMPANY POLICY, HAD RECENTLY REFUSED TO INCLUDE IT IN A CONTRACT UNDER NEGOTIATION AND HAD, HE THOUGHT PARTLY AS A RESULT, LOST OUT TO COMPETITION. SOVIET INSURANCE CLAUSE CALLS FOR ROUTINE PAYMENT TO SOVIET FTO OF 0.075 PER CENT OF ENTIRE VALUE OF CONTRACT FOR INSURANCE OF GOODS IN TRANSIT FROM THE U.S. MANUFACTURING FACILITY TO DOCKSIDE IN U.S. (O'HARA SAID HE KNEW OF SEVERAL U.S. FIRMS WHICH REGULARLY ACCEDE TO CONTRACTS WITH SOVIETS WHICH INCLUDE THIS CLAUSE, BUT MOST BUILD ADDED INSURANCE COSTS INTO CONTRACT PRICE.) O'HARA DECRIED SOVIET PRACTICE AS COMMERCIAL "BLACKMAIL" WHICH WORKS TO PARTICULAR DISADVANTAGE OF THOSE COMPANIES WHO REFUSE ON PRINCIPLE TO SIGN CONTRACTS CONTAINING INSURANCE CLAUSE. MOREOVER, FEE OF 0.075 PERCENT DEMANDED IS, HE SAID, THREE TIMES HIGHER THAN NORMAL DOMESTIC INSURANCE RATES IN U.S.

3. O'HARA SAID THAT HE HAD ATTENDED RECENT OFFICE OF SPECIAL REPRESENTATIVE TRADE HEARINGS IN WASHINGTON HELD AT INSTIGATION OF AMERICAN INSTITUTE OF MARINE UNDERWRITERS AND HELD BACK FROM RAISING THIS PROBLEM PUBLICLY THERE BECAUSE OF PRESENCE OF SEVERAL SOVIET FOREIGN TRADE OFFICIALS IN HEARING ROOM. IN THIS, O'HARA CONCEDED THAT IN HOLDING BACK FROM CRITICAL OFFICIAL USE

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PAGE 03 MOSCOW 05845 271429Z

CISMS ARMCO WAS REACTING TO SOVIET "INTIMIDATION" OVER THIS CLAUSE, JUST AS HE CLAIMED MANY OTHER FIRMS WERE DOING. O'HARA ALSO SAID THAT HE HAD INFORMED STATE AND COMMERCE DEPARTMENT OFFICIALS PRESENT AT THE HEARINGS ABOUT THIS PROBLEM.

4. COMMENT: CLEARLY, U.S. GOVERNMENT CAN DO NOTHING TO PREVENT AMERICAN FIRMS FROM SIGNING CONTRACTS WITH SOVIETS WHICH CONTAIN PATENTLY OUTRAGEOUS CLAUSES SUCH AS ONE DESCRIBED HEREIN. THIS CLAUSE IS CERTAINLY A COMMON FEATURE IN SOME FTO CONTRACTS. IT'S CONTINUING APPEARANCE, HOWEVER, IS ONE MORE PIECE OF EVIDENCE THAT SOVIET FOREIGN TRADE ORGANIZATIONS ARE OUT TO SHAVE PRICES THEY PAY FOR WESTERN GOODS IN EVERY WAY THEY CAN. O'HARA FEARS THAT THIS CLAUSE MAY BEGIN TO CROP UP MORE AND MORE IN FTO CONTRACTS AND CITED AS CASE IN POINT RECENT FTO SUDOIMPORT CONTRACT WHICH HE HAD SEEN. OTHER U.S. BUSINESSMEN CONFIRM THAT MASHINOIMPORT IS PARTICULARLY INSISTENT ABOUT CLAUSE. WE KNOW THAT USDOC/BEWT IS AWARE OF THIS CLAUSE, SINCE IT APPEARS IN SECTION 13 OF SAMPLE FTO FORM CONTRACT APPENDED TO HOYA/STEIN

ARTICLE ON "DRAFTING CONTRACTS IN U.S. - SOVIET TRADE"
PUBLISHED IN "LAW AND POLICY IN INTERNATIONAL BUSINESS"
(1975). GIVEN HEAT IT IS NOW GENERATING, EMBASSY,
HOWEVER INTENDS TO INCLUDE A SPECIFIC EXPLANATION OF
INSURANCE CLAUSE IN ITS STANDARD BRIEFING TO BUSINESSMEN.

5. EMBASSY WOULD WELCOME USDOC OR DEPARTMENT COMMENTS
ON ABOVE. TOON

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